Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Wireless Telecommunications Bureau	)	
Biennial Review of Rules within Its	)	WT Docket No. 02-310
Purview – Biennial Review 2002	)	

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF COMMNET CAPITAL, LLC

Commnet Capital, LLC and its affiliates (collectively, "Commnet"), by counsel and pursuant to the Public Notice, FCC 02-264, released September 26, 2002, hereby submits its Comments respecting the Commission's comprehensive 2002 biennial review of rules and regulations within the purview of the Wireless Telecommunications Bureau ("WTB"). Commnet is a holder of various cellular and broadband PCS licenses, as well as a provider of management, switching and other services for Part 22 and Part 24 licensees. Commnet specializes in providing services in rural or "unserved" areas (as defined in Section 22.99 of the Commission's Rules), operating or managing systems in a dozen states. In many cases, the areas served by Commnet were completely without service prior to Commnet's arrival; in the others, there was only marginal service by a single carrier. Commnet is thus well aware of the issues facing small, rural wireless carriers -- which rules remain necessary to preserve and expand service to otherwise underserved areas, and which constitute an obstacle to expanded service in these areas.

Summary of Comments

Commnet believes that the Commission should modify the rule pertaining to the use of so-called alternative propagation showings, which have largely outlived any

usefulness they may have once had. Future showings should be based only upon actual field strength measurements, not upon the use of paper models that this Commission has already rejected for general use.

Commnet believes the Commission should retain interference protection rules, and should also clarify that those rules protect analog operators from digital interference within the analog operator's CGSA. The current absence of interference protection represents a public safety hazard, especially in rural areas. In particular, the Commission should clarify that a digital licensee is responsible when its control/pilot signal extends beyond the range which its voice channels can reliably serve, and interferes with a handset's ability to access nearby analog voice channels.

Finally, Commnet believes the Commission should eliminate redundant language in Section 24.203(b) of the Rules, simply requiring carriers to demonstrate "substantial service" by the construction deadline, and stating that the various percentage thresholds being removed from the rules constitute "safe harbor" demonstrations of substantial service. In this connection, the Commission also should state that a carrier meets the "safe harbor" if it covers 25% of either population or land area of the licensed market.

I. Elimination of Obsolete Text within Section 22.911(b)

Section 22.911(b) of the Commission's Rules is a rule which allows a cellular carrier to claim as its protected CGSA (*i.e.*, the area within which it is entitled to interference protection, including protection against traffic capture by adjacent licensees on the same channel block) an area greater than normally would be afforded by the general service area boundary calculation methodology set forth in Section 22.911(a) of the Rules. Section 22.911(b) was added in 1992, at the same time that the Commission

changed the general rule by expanding the ordinary service area boundary from the 39 dBu contour to the larger 32 dBu contour.[1]

At the time, the Commission was reviewing the actual ordinary reliable service area boundary calculation method, because the Commission had imposed a freeze upon the filing of unserved area applications, and needed to have the best administratively-feasible method of calculating reliable service areas before it could know what areas truly remained unserved. The *CGSA Formula Order* was a response to claims by incumbent carriers that they were in fact generally able to provide reliable service in areas far beyond their ostensible service area boundaries as calculated under the Commission's original 39 dBu formula. *Id*., 7 FCC Rcd. at 2452-53. By changing the general formula from the 39 dBu contour to the 32 dBu contour, the Commission greatly expanded the pre-existing CGSA of all incumbent carriers just in advance of lifting the freeze.[2]

As such, the general rule set forth in Section 22.911(a) represents a solid model adopted only after the Commission and industry had years of experience in cellular propagation, and adopted precisely to ensure that incumbent carriers would not be stripped of areas already well-served by future unserved area applicants. Stated simply, Section 22.911(a) is superior to other propagation models.

However, to further protect incumbents from potential unserved area applications, the Commission also adopted what is now Section 22.911(b), allowing a carrier to demonstrate that it reliably serves an even larger area than that predicted under the

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[1] *See In the Matter of Amendment of Part 22, etc., Second Report and Order, CC Docket No. 90-6*, 7 FCC Rcd. 2449 (1992) ("*CGSA Formula Order*"). The new rule originally was numbered as 22.903 but was later renumbered to 22.911.

liberalized general rule (which already had greatly increased all incumbent protected CGSAs). The rule allows a carrier to make this demonstration either by engaging in drive tests to verify that a particular cell's 32 dBu contour is located at a distance greater than that predicted by the Commission's general rule in Section 22.911(a), or by submitting an alternative calculation methodology.

When originally adopted, there may have been a legitimate reason to allow a carrier to use an alternative calculation methodology rather than requiring drive tests – the Commission would soon be lifting the freeze upon unserved area applications, and there would not be sufficient time for carriers to engage in numerous drive tests across the country prior to the first waves of Phase I unserved area applications. However, the Phase I unserved area process is now largely spent.[3] The rationale for allowing expanded CGSA protection without field strength measurements has been extinguished.

At this point, there is no valid reason to allow any departure from the general rule of Section 22.911(a) except in the case of actual drive tests that verify that the expanded claimed CGSA is actually being served, and not being warehoused to the detriment of the involved rural population. Commnet has identified over a dozen large (*i.e.*, well over 50 square miles each) rural areas that in fact are completely unserved by any reliable signal from the ostensible licensee, but which, due to so-called alternative CGSA showings consisting solely of paper calculations, are within that licensee's protected CGSA and

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[2] *Id*., 7 FCC Rcd. at 2456, n.35. ("The distance to the service area boundary determined using the new formula is 31% greater than the distance to the 39 dBu contour.") Increasing the radius of a circle by 31% will increase the area of that circle by over 70%.

[3] There are less than half a dozen cellular markets still within the initial 5-year "fill-in" stage.

therefore off-limits to newcomers (such as Commnet) that desire to put a cell site in the town and provide service.

Moreover, in one case, Commnet retained an independent radio engineer to drive a rural area in Wyoming where the incumbent carrier submitted an alternative CGSA showing based entirely upon paper calculations. The engineer's drive test produced field strength measurements documenting that in fact the area beyond the ordinary CGSA (as calculated under Section 22.911(a)) remained unserved, and that grant of the application would enable the incumbent carrier to warehouse a very large area containing towns and highways in Wyoming that were desperate for cellular service.[4]

Commnet believes that if drive tests were conducted upon any other alternative CGSA application for the past six years, the result would be the same. (Commnet is unaware of any application being filed during that time using drive tests, as opposed to paper calculations.) However, the cost of engaging in repeated drive tests in order to prosecute a petition to deny is prohibitive, especially when at best it would entitle the petitioner to file its own competing application and participate in an auction with no guaranty of success.

The public interest is best served by prospectively requiring licensees desiring to make an alternative propagation showing to do so via actual drive tests, not paper studies.[5] Accordingly, the Commission should delete the obsolete portion of Section 22.911(b) that permits the use of such paper calculations in lieu of actual drive tests. No

[4] *See* FCC File No. 0000811114.

[5] The public interest is also best served by requiring even existing holders of alternative CGSA authorizations to conduct drive tests or face modification (*i.e.*, reduction) of their CGSAs, but that may be beyond the scope of this proceeding.

new text is required, simply deletion of obsolete text. Appendix A attached hereto shows the proposed revised Section 22.911(b).[6]

II. Section 22.911(d) Should Be Retained and Clarified

One rule that is not obsolete is Section 22.911(d), which states that a cellular licensee is entitled to interference protection within its licensed CGSA, including protection against capture of customer traffic by adjacent licensees operating in the same frequency block. The Commission should retain this rule, and in the text of the next biennial review order, or earlier, if the opportunity presents itself, the Commission should clarify that this rule protects a licensee against gamesmanship by adjacent licensees.

The specific problem is that adjacent carriers with digital cellular facilities are increasingly setting their control/pilot channels at an unacceptably high ERP, which causes a digital-capable handset to "lock" onto the involved digital control/pilot channel even where that digital carrier does not have a strong enough voice channel to process the call. The offending carrier blocks the traffic, because virtually all dual-mode handsets lock onto a digital control/pilot signal if one is detected, without regard to the existence of a more powerful analog control//pilot signal and even where the digital base station is too far away to process the call.[7]

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[6] The revisions are to the rule as recently revised in *Year 2000 Biennial Regulatory Review – Amendment of Part 22, etc., WT Docket No. 01-108*, FCC 02-229, released September 24, 2002 ("*Year 2000 Review*").

[7] In one system managed by Commnet, one literally can stand in the shadow of the Commnet affiliate's full-power cell site tower, and if one has a dual-mode CDMA/analog phone, be unable to access the Commnet affiliate's system due to the offending control/pilot channel coming from the neighboring carrier's CDMA cell site. Because the neighboring carrier's voice channels are too weak to handle the calls, this area has become a dead spot for all those with dual-mode CDMA/analog phones. In any 911 emergency, the call would not go through.

Aside from being an abuse (and, we believe, a violation) of the Commission's Rules, this practice of high power digital control/pilot signals is also a danger to public safety. Specifically, when a user is making an emergency call, such as a 911 call, it is critical that there be a strong and viable connection to the nearest Public Safety Access Provider ("PSAP"). The presence of the offending digital control/pilot channel will cause the handset to lock onto its system, even though the voice channel is too weak to handle the call, and even though there is a much stronger analog signal available from the local licensee. The emergency call cannot go through, and the customer is effectively in a dead spot, unable to obtain help for the emergency.[8]

Accordingly, Commnet requests that the Commission clarify that a carrier operating in a digital format must regulate the strength of its control/pilot signals (including, if necessary, tuning the control/pilot signal to a lower power than the voice channels) to avoid causing a public safety hazard by creating such artificial dead spots in its neighbor's CGSA.

III. Elimination of Obsolete Text within Section 24.203(b)

The Commission's Rules concerning the construction requirements for 10MHz and 15 MHz Part 24 broadband PCS licensees could be streamlined and clarified by the elimination of redundant or obsolete text within Section 24.203(b) of the Rules. Currently, that section contains two separate methods for a licensee to meet its five-year construction threshold: either demonstrate coverage to at least one-quarter of the involved geographic area population; or "make a showing of substantial service. . .". The wording

[8] Even in the event the call ultimately did go through, it would be routed to the PSAP in the adjoining market, not the market in which the call was originating!

is such as to imply that serving one-quarter of the population is not itself "substantial service", when manifestly it is.

The solution is to delete redundant text, so that the rule would simply state that each licensee must "make a showing of substantial service" by the five-year deadline. The biennial review order itself would say, in the text of the order, that service to at least one-quarter of the market's population constitutes a "safe harbor", because meeting that threshold will always be deemed to constitute "substantial service". (The order should also state that service to at least one-quarter of the market's land area constitutes a "safe harbor" showing of substantial service, in order to facilitate construction and operation in rural markets where the population is neither dense nor clustered.) Appendix B attached hereto shows the proposed revised Section 24.203(b).

CONCLUSION

The Commission should delete the obsolete text from Section 22.911(b) of the Rules, which allows a licensee to submit an alternative propagation showing without any field strength measurements whatsoever. This text was added in 1992 to enable incumbent carriers, on a one-time basis in advance of the original Phase I unserved area filing windows, to submit alternative showings timely in advance of the then-upcoming windows. This was a one-time event, which ended long ago. Currently, the rule serves no public interest purpose, and invites warehousing in rural areas.

The Commission should retain the current Section 22.911(d) of the Rules, and should clarify that certain practices being adopted by digital carriers to block the traffic of their analog neighbors, which practices also constitute a threat to public safety, are in violation of this rule and must cease.

Finally, the Commission should delete surplus language from Section 24.203(b) of the Rules, and should clarify in the order doing so that service to 25% of a market's population or land area within five years of license issuance will always be deemed to be "substantial service" within the meaning of Section 24.203(b).

Respectfully submitted,
COMMNET CAPITAL, LLC,
on behalf of itself and its affiliates

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